

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In re:

**PHILLIP L. WILLIAMS, SR. AND
ALLYSON E. WILLIAMS,**

BANKRUPTCY CASE NO.: 10-81248

Soc. Sec. Nos. xxx-xx-6659 & xxx-xx-3569
Mailing Address: 504 Stonelick Drive, , Durham,
NC 27703-

Debtors.

**PHILLIP L. WILLIAMS, SR. AND
ALLYSON E. WILLIAMS,**

A.P. NO.: _____

Plaintiffs,

**BENEFICIAL MORTGAGE OF NORTH
CAROLINA,**

Defendant.

VERIFIED COMPLAINT TO VALUE COLLATERAL

The Plaintiffs, above-named, respectfully allege as follows:

1. That this matter is a core proceeding pursuant to 28 U.S.C. § 157, and that the court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157 and 1334.
2. This Complaint was filed, pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c), and in accordance with Bankruptcy Rule 7001, to value their residence for the purpose of determining the secured status of the mortgage claim held by BENEFICIAL MORTGAGE OF NORTH CAROLINA.
3. The Plaintiffs are filed this bankruptcy case on July 16, 2010, seeking protection under Chapter 13 of Title 11 of the United States Code.
4. The Defendant BENEFICIAL MORTGAGE OF NORTH CAROLINA is a corporation and/or a partnership with an office and principal place of business located at Post Office Box 10490, , Virginia Beach, VA 23450- and/or Post Office Box 829009, Dallas, TX 75382-9009 .This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c).
5. The Plaintiffs own real property located at 504 Stonelick Drive, Durham NC 27703. The legal description of the property is as follows:

BEING ALL OF LOT 27 OF GRAPEVINE, PHASE TWO, AS PER PLAT AND SURVEY THERE OF NOW ON FILE IN THE OFFICE OF THE REGISTER OF DEEDS OF DURHAM COUNTY IN PLAT BOOK 135 AT PAGE 205, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION OF THE SAME.

Actual Description

BEING all of Lot 27 of Graystone, Phase Two, as per plat and survey thereof no on file in the office of the Register of Deeds of Durham County in Plat Book 135 at Page 205, to which plat reference is hereby made for a more particular description of the same. The tax map or parcel ID No. is: 8326-1-27

6. Branch Banking & Trust Company holds a first Deed of Trust on such property with an payoff balance, as of the date this case was filed in the amount of approximately \$88,001.86, as indicated on the proof of claim filed on July 29, 2010. This Deed of Trust originally given to and held by Wachovia Mortgage Company. This Deed of Trust was recorded on October 9, 1998, in Book 2547 at Page 376, Durham County Registry of Deeds.
7. Beneficial holds a second Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$28,981.60, as indicated on the proof of claim filed on October 12, 2010. This Deed of Trust was recorded on July 20, 2001, in Book 3150 at Page 779, Durham County Registry of Deeds.
8. BENEFICIAL MORTGAGE OF NORTH CAROLINA holds a third Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$6,000.00. This Deed of Trust was recorded on July 20, 2001, in Book 3150 at Page 787, Durham County Registry of Deeds.
9. The fair market value of the said property is not greater than \$102,258.00.
10. Pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c) of the Bankruptcy Code and In re: Kidd, 161 B.R. 769 (Bankr. E.D.N.C. 1993), the loan with BENEFICIAL MORTGAGE OF NORTH CAROLINA, secured by a third Deed of Trust against the Plaintiffs' said property, is an unsecured claim. In turn, pursuant to 11 U.S.C. § 506(d), the lien securing said loan is void.
11. The Deed of Trust held and/or serviced by the Defendant takes an additional security interest in, among other personal property, the Plaintiffs' escrow account.
12. Pursuant to In re Bradsher, 2010 WL 545967 (Bankr. M.D.N.C. February 16, 2010), such additional collateral renders 11 U.S.C. § 1322(b)(2) inapplicable.

WHEREFORE, the Plaintiffs pray the Court find that said claim held by BENEFICIAL MORTGAGE OF NORTH CAROLINA, which is secured by a third Deed of Trust upon said property, to be wholly unsecured, and that said claim should therefore be classified an unsecured claim for the purpose of this Chapter 13 case. The Plaintiffs further pray that the Court order BENEFICIAL MORTGAGE OF NORTH CAROLINA to cancel the said Deed of Trust forthwith upon the completion of the Plaintiffs' Chapter 13 plan and the granting of the Plaintiffs' discharge, and that the Court grant such other and further relief as to the Court seems just and proper.

Dated: June 24, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz

Edward Boltz

Attorney for the Plaintiffs
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6616-203 Six Forks Road
Raleigh, N.C. 27615
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Plaintiffs,

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CAROLINA,**

Defendant.

VERIFICATION OF COMPLAINT TO VALUE COLLATERAL

We, PHILLIP L. WILLIAMS, SR. and Allyson E. Williams, the Plaintiffs in the above captioned case, hereby state, under penalty of perjury, that, to the best of our knowledge, that:

1. Branch Banking & Trust Company holds a first Deed of Trust on such property with an payoff balance, as of the date this case was filed in the amount of approximately \$88,001.86, as indicated on the proof of claim filed on July 29, 2010. This Deed of Trust originally given to and held by Wachovia Mortgage Company. This Deed of Trust was recorded on October 9, 1998, in Book 2547 at Page 376, Durham County Registry of Deeds.
2. Beneficial holds a second Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$28,981.60, as indicated on the proof of claim filed on October 12, 2010. This Deed of Trust was recorded on July 20, 2001, in Book 3150 at Page 779, Durham County Registry of Deeds.
3. BENEFICIAL MORTGAGE OF NORTH CAROLINA holds a third Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$6,000.00. This Deed of Trust was recorded on July 20, 2001, in Book 3150 at Page 787, Durham County Registry of Deeds.
4. The fair market value of the said property is not greater than \$102,258.00.

5. The Deed of Trust held and/or serviced by the Defendant takes an additional security interest in, among other personal property, our escrow account.

Dated: 6/22/2011

/s/ Phillip L. Williams Sr
PHILLIP L. WILLIAMS, SR.

Dated: 6/22/2011

/s/Allyson E. Williams
Allyson E. Williams

Notarization:

Sworn and subscribed before me on 6/22/2011

Affix Seal or
Stamp

/s/Glenda Mathis
Signature of Notary Public

Commission expires: 6/24/2011